IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ODYSSEY WASTE SERVICES, LLC, **Plaintiff,** **v.** **BFI WASTE SYSTEMS OF NORTH AMERICA, INC., TAC TRANSPORT, INC., and SAMUEL RINGGOLD,** **Defendants**	:	**CIVIL ACTION** **NO. 05-cv-1929**

M E M O R A N D U M

PRATTER, DISTRICT JUDGE AUGUST 31, 2006

Odyssey Waste Services, LLC ("Odyssey") brought suit against the Defendants, BFI Waste Systems of North America, Inc. ("BFI"), TAC Transport, Inc. ("TAC") and Samuel Ringgold in the Court of Common Pleas of Philadelphia County alleging claims for intentional interference with contractual relations against all of the Defendants as well breach of contract against BFI. The Defendants timely removed the action to federal court and commenced the discovery process. Discovery closed, and, on July 20, 2006, Odyssey filed a Motion for Leave to File an Amended Complaint, requesting permission to add an additional defendant as well as additional claims. For the following reasons, the Motion for Leave to File an Amended Complaint is denied.

BACKGROUND

In brief, the case centers around a Waste Transportation Agreement between Odyssey and BFI pursuant to which Odyssey provided hauling services for municipal and other waste that BFI received at its transfer stations in Philadelphia. On March 29, 2005, Odyssey brought suit in state court against the Defendants alleging that all of the Defendants interfered with its contractual relations and that BFI breached the Waste Transportation Agreement. The Defendants timely removed the suit to federal court on April 26, 2005. Subsequently, Defendants BFI and Mr. Riggold answered the complaint and filed a counterclaim, and Defendant TAC filed a motion to dismiss the complaint pursuant to Federal Rule of Procedure 12(b)(6), which was denied on November 17, 2005. Discovery was originally scheduled to end on May 31, 2006. At the request of Odyssey, BFI, and Mr. Ringgold, the Court extended the scheduling dates by thirty days. On July 13, 2006, again at the request of Odyssey, the Court extended the expert witness discovery dates an additional two weeks. On July 20, 2006, twenty days after the close of discovery, Plaintiff Odyssey filed the Motion for Leave to Amend the Complaint, which is opposed by the Defendants.

DISCUSSION

A. Legal Standard

Pursuant to Federal Rule of Civil Procedure 15(a), leave to amend a complaint "shall be freely given when justice so requires." FED. R. CIV. P. 15(a). Amendment may be inappropriate, however, when the underlying circumstances show "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, [or] futility of the amendment." Foman v. Davis, 371 U.S. 178, 182 (1962). With respect to undue delay, "the passage of time, without more, does not require a motion to amend a complaint be denied; however, at some point, the delay will become 'undue,' placing an unwarranted burden on the court, or will become 'prejudicial,' placing an unfair burden on the opposing party." Cureton v. Nat'l Collegiate Athletic Ass'n, 252 F.3d 267, 273 (3d Cir. 2001) (*quoting* Adams v. Gould, Inc., 739 F.2d 858, 868 (3d Cir. 1984)). The question of whether undue delay should prevent leave to amend from being granted focuses on the moving party's reasons for not amending sooner. Id.

Leave to amend may also be denied where amendment would result in substantial prejudice to the nonmoving party. Id. Although the Court of Appeals for the Third Circuit has emphasized that prejudice to the non-moving party is the touchstone for the denial of an amendment, the non-moving party cannot merely claim prejudice, but "must show that it was unfairly disadvantaged or deprived of the opportunity to present facts or evidence which it would have offered had the . . . amendments been timely." Bechtel v. Robinson, 886 F.2d 644, 652 (3d Cir. 1989) (citations omitted). Substantial or undue prejudice has been found and amendment denied "where the amendment would have asserted new claims, where new discovery would have been necessary, where the motion for leave was filed months after the factual basis of the amendment was discovered by the moving party, and where the motion for leave was brought after summary judgment motions were filed." Cummings v. City of Philadelphia, 00-0034, 2004 U.S. Dist. LEXIS 9030, at *11 (E.D. Pa. Apr. 26, 2004) (citations omitted). "Ultimately, whether leave to amend should be granted or denied is committed to the sound discretion of the trial court." Arab African Int'l Bank v. Epstein, 10 F.3d 268, 174 (3d Cir. 1993).

B. Analysis

As noted above, Odyssey filed their motion for leave to amend the complaint on July 20, 2006, approximately 16 months after the commencement of this action in state court and 20 days after the close of discovery. The Motion, *inter alia*, proposes adding Allied Waste Industries, Inc. ("Allied"), BFI's parent company, as a defendant on the claims against BFI and adding a count of conspiracy against Allied, BFI, TAC, and Mr. Ringgold. The Motion further re-casts Odyssey's intentional interference with contractual relations claims as intentional interference with prospective contractual relations. Odyssey asserts that its proposed amendments should be allowed because they are based on newly discovered evidence and the amendments would not require any additional discovery or cause any other undue delay.

With respect to the addition of Allied as a defendant, Odyssey argues that evidence obtained during discovery established that Allied is the "proper corporate defendant" because it "controlled, managed and directed all of the business, financial and operational affairs of BFI" and because all of BFI's employees became employees of Allied at the time of the 1999 acquisition and the various actions giving rise to the lawsuit were committed by those employees. Odyssey asserts that Allied should not be surprised or prejudiced by their addition as a defendant because Allied's in-house counsel provided legal advice to its employees with respect to this suit, approved the terms of an agreement pursuant to which Allied agreed to reimburse TAC for some of its legal fees, and has been "actively involved" in defending BFI and Mr. Ringgold from the beginning of the litigation, including having Allied employees attending two depositions.

Odyssey further argues that leave to add a conspiracy claim against Allied and the Defendants should be granted because, when the Complaint was filed in March 2005, Odyssey was unaware of the communications between Allied and the Defendants which demonstrated the existence of an unlawful civil conspiracy. Odyssey does assert, however, that the activities described in the Complaint's original causes of action were "maliciously designed to further the objectives of the unlawful conspiracy."

In contrast, the Defendants argue that the Court should deny the request for leave to amend because Odyssey has unduly delayed in proposing the new causes of action and: (1) Odyssey has known of the factual bases for the proposed new causes of action since the inception of the lawsuit, (2) delay and prejudice would result from amendment because the Defendants and Allied will need to pursue extensive additional discovery, and (3) the proposed conspiracy claim would be futile because Odyssey cannot establish the requisite elements of civil conspiracy.[1]

1. Undue Delay

As noted above, Odyssey contends that it has not unduly delayed in amending the Complaint because it only recently learned of the facts upon which the proposed amendments are based in that it only discovered the factual bases for the conspiracy claim and involvement of Allied after the close of discovery when counsel "carefully reviewed" the discovery obtained. Further, Odyssey asserted in its Motion that it could not have amended its Complaint at an earlier date because Odyssey did not know of the "central role" played by Allied employee Don Neukam in the alleged conspiracy, and could not confirm the details of his involvement, until his deposition on June 23, 2006.

As the Defendants correctly note, the factual core supporting Odyssey's new conspiracy claims as well and the evidence supporting the addition of Allied as the "correct" corporate defendant were known to it at the time it filed its original complaint in the court of common pleas. That is, with respect to the addition of Allied as a defendant, Odyssey was seemingly well-aware of Allied and BFI's parent/subsidiary relationship as well as Allied's relationship to the facts of the case at the time it filed the Complaint. Specifically, although Odyssey never formally brought suit against Allied, Odyssey's Complaint in its initial paragraph states that the complaint is filed "against Allied/BFI Waste Systems of North America, Inc." Further, Odyssey attached correspondence to its Motion written in 2004 by its President and CEO, William Johnson, which was addressed to Kevin Hee at Allied Waste Systems and Brent Schwartz at

[1] Because the Court denies the Motion based on undue delay and prejudice to the non-moving parties, the Court does not reach the argument that Odyssey's conspiracy claims could not survive a motion to dismiss.

BFI/Allied Waste Systems, respectively. Importantly, the letters go directly to the heart of the claims as set forth by Odyssey – that Allied and BFI unfairly and illegally, in collusion with each other and outsiders, breached the Waste Transportation Agreement. Furthermore, the letter written to Mr. Kee is copied to Mr. Schwartz, and the letter written to Mr. Schwartz is copied to Messrs. Neukam, Kee, and Ringgold. Even if, as Odyssey argues, it did not have knowledge of the full extent of Allied employee Don Neukam's involvement in the actions giving rise to the claims until his deposition on June 23, 2005, Odyssey clearly knew of the relationships between the Allied and BFI employees and their connections with the disagreement regarding the Waste Transfer Agreement.

By its own calculation, Odyssey has been in possession of all of the information it deemed necessary to file its Motion to Amend since June 23, 2006, one month before the filing of the Motion. As outlined above, much of the evidence was known prior to the filing of the original Complaint, or, at the very least, during the months of discovery which took place following its filing. Odyssey and its counsel had ample time to obtain and review the documents and correspondence well before Mr. Neukam's June 23, 2006 deposition and the June 30, 2006 close of discovery. The failure to review the available discovery and promptly file a motion to amend does not serve as an adequate justification for delay in this case. Odyssey's dilatory behavior has also placed an undue burden on the Court. The Court has been more than accommodating with respect to Odyssey's requests for discovery extensions. The case has been proceeding pursuant to a Revised Scheduling Order, which requires the parties to file and serve dispositive motions on or before September 29, 2006, and proceed to a trial pool date of December 12, 2006. Moreover, as outlined in greater detail below, if the Court were to grant Odyssey's Motion to Amend, further extensive discovery would necessitate an even greater delay in the resolution of this case. Accordingly, the Court finds that Odyssey has unduly delayed in seeking amendment without adequate justification, and, in the exercise of discretion, denies Odyssey's Motion for Leave to Amend the Complaint.

2. Substantial Prejudice

While the Court finds that Odyssey has unduly delayed in seeking to amend the Complaint, which, standing alone, warrants denial of their Motion, the Court further finds that the Motion must be denied because the proposed amendments would result in substantial prejudice to the Defendants and Allied. That is, as noted above, Odyssey argues that the Defendants will not be suffer substantial prejudice from the amendment because it will not require any further discovery, any unreasonable costs or expenses, nor any delay in the Court's Scheduling Order. Odyssey further argues that amendment should be allowed because its proposed amended complaint is "substantially similar" to the Complaint and Allied should not be "surprised" by the amendment because it observed depositions, was actively involved in defending BFI and Mr. Ringgold, and agreed to reimburse TAC for its legal fees.

In contrast, the Defendants assert that amendment at this late hour will cause substantial prejudice because extensive discovery would have to occur with reference to the conspiracy and interference with prospective contracts claims, and Allied would be entitled to full discovery regarding all of the claims against it. Further, the Defendants note that they have been diligently working on their dispositive motions, which are due to be filed on or before September 29, 2006, and that they would incur substantial further costs by being forced to re-open discovery to probe Odyssey's new claims.

Here, Odyssey proposes to alter the Complaint by adding new causes of action and a new defendant. These proposed amendments would force the Defendants to incur substantial additional costs in re-visiting the discovery process to explore Odyssey's new theories and claims which it should have presented in a more timely manner. Moreover, the substantial prejudice which would result if Allied were added as a defendant is manifest. Allied's participation up to this point has been as a non-party, and it is well-settled that parents and subsidiaries are presumed to be separate legal entities. Mellon Bank, N.A. v. Metro Communications, Inc., 945 F.2d 635, 643 (3d Cir. 1991). To what extent Allied has defended Mr. Ringgold and BFI in this action and whether its representatives attend depositions, is of no moment to Allied's entitlement, if added as a defendant, to the fulsome discovery allowed to every defendant called into court. Allied has been unable to participate in the discovery process as a named defendant, and the Court seriously questions whether it is possible for Allied, a non-party heretofore, to conduct meaningful discovery at this late stage. The issue is not, as Odyssey would like to paint it, whether Allied should or should not be "surprised" by its proposed addition as a defendant. Rather, it is a question of prejudice, and, here, the prejudice to Allied would be substantial because it could not be expected to file a dispositive motion and/or proceed to trial on the issues at any time in the near future. Based on the above, the Court finds that granting Odyssey permission to amend its complaint to add further claims and a defendant would unduly prejudice the non-moving parties. Accordingly, the Motion is denied.

CONCLUSION

For the foregoing reasons, the Court finds that the Motion for Leave to Amend the

Complaint is denied. An appropriate order follows.

BY THE COURT:

S/Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ODYSSEY WASTE SERVICES, LLC,	:	**CIVIL ACTION**
Plaintiff,	:	
	:	
v.	:	
	:	
BFI WASTE SYSTEMS OF NORTH	:	
AMERICA, INC., TAC TRANSPORT,	:	
INC., and SAMUEL RINGGOLD,	:	
Defendants	:	**NO. 05-cv-1929**

O R D E R

AND NOW, this 31st day of August, 2006, upon consideration of Plaintiff Odyssey's Motion for Leave to Amend the Complaint (Docket No. 31), the Responses thereto (Docket Nos. 32, 33), Odyssey's Reply (Docket No. 34), and Defendant TAC Transport, Inc.'s Sur-Reply (Docket No. 35), it is hereby ORDERED that the Motion is DENIED.

BY THE COURT:

S/Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE